


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
OCT 01 2015

CLERK

PAUL A. ROSBERG,
Plaintiff,

vs.

UNITED STATES OF AMERICA, ERIC
HOLDER, DEBORAH R. GILG, LAURIE
M. BARRET, RUSSELL X. MAYER,
HORACIO J. WHELOCK, JOEL
CARLSON, and OMAHA PUBLIC
SCHOOL,

Defendants.

4:15-CV-04075-LLP

ORDER DISMISSING
COMPLAINT

INTRODUCTION

Plaintiff, Paul A. Rosberg, filed this pro se lawsuit, arguing defendants violated his plea agreement. He named the United States of America, Eric Holder, Deborah R. Gilg, Laurie M. Barret, Russell X. Mayer, Horacio J. Wheelock, Joel Carlson, and Omaha Public School as defendants. At the time of filing, Rosberg was incarcerated at the federal prison camp in Yankton, South Dakota. The Court has “screened” this case pursuant to 28 U.S.C. § 1915A. For the following reasons, Rosberg’s claim is dismissed.

FACTUAL BACKGROUND

Rosberg was a farmer in Nebraska and operated a federally inspected meat processing plant with his wife, Kelly. Docket 1 at ¶1. He was arrested for illegally packaging meat. *Id.* at ¶1, 4. At the beginning of his trial, Rosberg said he did not want counsel appointed because he did not want to pay for counsel.

Id. at ¶3. The judge said he would not have to pay, and appointed standby counsel. *Id.*; Docket 1-1 at 1. Rosberg eventually signed a plea agreement. Docket 1 at ¶12.

During the change of plea hearing, the judge appointed defendant Wheelock as defense counsel. 8:12-cr-00271-RGK-FG3 Docket (hereinafter “CR Docket”) 207, 208. Prior to this, Wheelock acted as standby counsel in this case and as counsel in another, related case. *Id.* During the hearing, the judge said that he would wait to determine whether Rosberg was responsible for his fees. *Id.* At sentencing, Rosberg was ordered to reimburse the Criminal Justice Act (CJA) Fund for Wheelock’s legal assistance in this and the related case. CR Docket 247.

DISCUSSION

Rosberg alleges this court has diversity jurisdiction under 28 U.S.C. § 1332. “Diversity jurisdiction ‘requires an amount in controversy greater than \$75,000 and complete diversity of citizenship of the litigants.’” *E3 Biofuels, LLC v. Biothane, LLC*, 781 F.3d 972, 975 (8th Cir. 2015) (quoting *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007)). “ ‘Complete diversity of citizenship exists where no defendant holds citizenship in the same state where any plaintiff holds citizenship.’ ” *Id.* (quoting *OnePoint Solutions*, 486 F.3d at 346).

“[F]or purposes of determining diversity of citizenship, the controlling consideration is the domicile of the individual.” *Jones v. Hadican*, 552 F.2d 249, 250 (8th Cir. 1977). “[A] prisoner does not acquire a new domicile when he

is incarcerated in a different state; instead, he retains the domicile he had prior to his incarceration.” *Id.* (citations omitted). The court held this “traditional rule” was a presumption that “could be rebutted by a prisoner who could show facts sufficient to indicate a bona fide intention to change his domicile to the place of his incarceration.” *Id.* at 251.

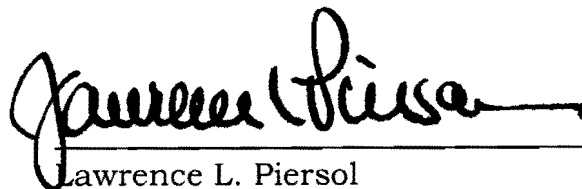
When he filed this complaint, Rosberg was a prisoner in South Dakota. Before being incarcerated, he lived in Nebraska, where defendants Mayer, Wheelock, and Carlson lived, as well as where the Omaha Public School is located. Rosberg has not argued that he is domiciled outside of Nebraska. Therefore, his citizenship is not diverse to all defendants.

Even though Rosberg did not argue it in his complaint, Federal courts have jurisdiction to hear “Controversies to which the United States shall be a Party.” U.S. Const. art. III, § 2, cl. 1. As a defendant, however, “The United States is immune from suit unless it consents.” *Hart v. United States*, 630 F.3d 1085, 1088 (8th Cir. 2011). Therefore, this court does not have jurisdiction over this case.

Accordingly, it is ORDERED that Rosberg’s complaint (Docket 1) is dismissed without prejudice for lack of jurisdiction.

Dated October 1, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Lawrence L. Piersol', written over a horizontal line.

Lawrence L. Piersol
UNITED STATES DISTRICT JUDGE